IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and THE HONORABLE CHIEF JUDGE, KATHY A. HARDCASTLE, District Judge,

Respondent.

and

CHARLES F. GIAMPA,

Real Party In Interest.

FILED
October 15, 2007
Clerk of the Court
District Court
Case No: 98-D224029

Nevada Supreme
Court No.: 50370

Oral Argument Requested:
YES

PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION

COMES NOW, PETITIONER VICTORIA GIAMPA (hereinafter PETITIONER VICTORIA), In Pro Se, who hereby brings her PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION PURSUANT TO NRS 34.160. This Application for issuance of Writ relief is made based upon the following:

WHEREFORE, PETITIONER VICTORIA prays that this Honorable Nevada Supreme Court rule as follows:

1. issue a Writ of Mandamus commanding RESPONDENT HARDCASTLE, on or before December 1, 2007, or that the parties are to appear before this Court and show cause why RESPONDENT HARDCASTLE has not done so, and/or after hearing issue a Peremptory Writ of Mandamus commanding RESPONDENT HARDCASTLE to perform the foregoing request for relief to issue on or before November 30, 2007.

DATED this 15th day of OCTOBER, 2007.

By:
Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Pro Se

NOTICE OF HEARING

TO: CHIEF DISTRICT COURT JUDGE KATHY A. HARDCASTLE, RESPONDENT
TO: DISTRICT COURT JUDGE SANDRA L. POMRENZE
TO: CHARLES F. GIAMPA – PLAINTIFF, REAL PARTY IN INTEREST
TO: BRYCE C. DUCKWORTH, ESQ. – ATTORNEY FOR PLAINTIFF, REAL PARTY IN INTEREST

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION,** on for hearing before the Nevada Supreme Court, Carson City, Nevada on the ____day of _____, 2007, in Department No. __, at ___ _.m., or as soon thereafter as counsel can be heard.

DATED this 15th day of OCTOBER, 2007.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Defendant/Counterclaimant
In Pro Se

PRELIMINARY STATEMENT

A Writ of Mandamus is available to control an arbitrary or capricious exercise of discretion.

A Writ of Prohibition is available when a district Court acts without or in excess of its judgment.

FACTUAL STATEMENT

On September 23, 1998, after a 21-year marriage, and after a brief hearing, the parties, CHARLES F. GIAMPA, PLAINTIFF, (hereinafter PLAINTIFF GIAMPA) and VICTORIA GIAMPA, DEFENDANT, (hereinafter PETITIONER VICTORIA) were granted a Decree of Divorce where the parties were awarded joint legal custody and where PETITIONER VICTORIA, a stay-at-home-mom, was granted primary physical custody of both minor children, MARCO and SARAH, who were adopted by the parties. PETITIONER VICTORIA appeared in proper person, PLAINTIFF GIAMPA appeared, by and through, Bryce C. Duckworth, Esq. who prepared the final Order. One year to the day, PLAINTIFF GIAMPA appeared before Judge Steele and was granted a reduction in visitation from (3) weeks down to (2) because of his heavy work schedule. PETITIONER VICTORIA believes that the Court did not reduce PLAINTIFF GIAMPA'S time, but effectively and regrettably reduced the children's time with their father. From that time on, PLAINTIFF GIAMPA did not follow the parenting plan, nor did he exercise his right to overnight visitation for more than (5) years. PLAINTIFF GIAMPA even withheld paying support and deliberately failed to pay the monthly bill for the family vehicle, setting matters in motion causing the vehicle to be repossessed. Early in the

divorce proceedings, PETITIONER VICTORIA and the parties' (2) minor children were at times short on food and money for household expenses such as the mortgage payment and utility bills that were all seriously past due. PETITIONER VICTORIA'S belief is that PLAINTIFF GIAMPA'S motive in filing a motion in November 2004 and an order shortening time that resulted in her losing her visitation with the children during a previous Christmas holiday season was for the sole purpose of creating incident to promote a change of custody. The parties' children, with their juvenile judgment, were being bought by PLAINTIFF GIAMPA during a time when their desires for independence were at the forefront. PLAINTIFF GIAMPA then entices the parties' children with the prospect of renting their own apartment since the scheme to file for a change of physical custody was already set in motion deliberately provoking disruption and creating instability at time of visitation and desiring a 'sham swap' for stability and continuity in a change of physical custody when clearly PLAINTIFF GIAMPA'S habit and pattern was leaving them alone and without parental supervision on visitation and his busy schedule. Although there is no provision in the custody agreement for visitation with other family members, the disruption caused the children to be separated from both parents during a traditional holiday for a period of (6) days which was unprecedented within the custody agreement. The parties' irresponsible teenagers in essence have been rewarded by the court in their efforts at bad behavior. When PLAINTIFF GIAMPA began to exercise visitation and began overnight visitation with the minor children, he left the children alone and unsupervised in provocative gaming casinos/hotels, placing the children at a greater physical risk of harm. While at the same time PLAINTIFF

GIAMPA is remarried and is living in his current wife's home located at 2963 E. Viking Road, Las Vegas, Nevada, PLAINTIFF GIAMPA admits to and bemoans paying for his current wife's household expenses, but also pays for and sets up as yet a second household exclusively for the children at a cost of $1500 per month separate and apart from both parties. This apartment is located in the Country Club Towers. PLAINTIFF GIAMPA took step by step effort to fool and deceive this Court, by and through, counsel of record, to deliberately and purposefully mislead the Court into believing PLAINTIFF GIAMPA is living in the apartment with their children. PETITIONER VICTORIA has evidence sufficient to show that because of this living arrangement, the children live daily without the care and supervision of either parent. PLAINTIFF GIAMPA filed an Affidavit pursuant to Court Order listing times and places where he left the jurisdiction and leaving the children alone and unsupervised. The Court selected Dr. Louis Mortillaro as the psychologist to evaluate the family and the parties' minor children and to give his recommendation to the Court. He stated that it is important that the children live in the residence of either parent, not in a separate apartment. In violation of the Court's express orders prohibiting such neglectful conduct, including strict admonishment that PLAINTIFF GIAMPA not leave the children alone unsupervised overnight or for more than a couple hours, PLAINTIFF GIAMPA, completely indifferent to the children's safety and welfare, made several out of town trips out of the jurisdiction and out the country. Clearly PLAINTIFF GIAMPA could not properly supervise or control the children placing them at further risk of harm. PLAINTIFF GIAMPA on each occasion failed and refused to provide PETITIONER VICTORIA with written notice of his

jurisdictional absences despite lawful Court Order(s) requiring his compliance. District Court Judge was reluctant to enforce the Court Order(s) that the children are not to be left alone since she did not find PLAINTIFF GIAMPA in contempt for him violating the Court's previous order(s). PLAINTIFF GIAMPA has sold himself to the minor children by buying them expensive cars and cell phones, giving them excessive pocket money and the unbridled freedom to live unsupervised in their own high-rise apartment. PLAINTIFF GIAMPA did fail to seek mediation prior to commencing the instant litigation. Thereafter, PETITIONER VICTORIA sought relief from the Court to litigate the issue of emancipation and a change of physical custody. PLAINTIFF GIAMPA'S careless and fancy free attitude has resulted in both children having received six (6) unexcused absences from school; Sarah's scanned (6) weeks, and did not graduate academically on time. On the other hand, PETITIONER VICTORIA has evidence, corroborated by personal affidavits of family friends, written declarations from Police Officers from the Las Vegas Metropolitan Police Department who confirmed by well-checks that the children were indeed left alone and unsupervised in the Country Club Towers, and PLAINTIFF GIAMPA'S affidavit under oath listing dates and times when he left the jurisdiction and traveled out of the country. When PLAINTIFF GIAMPA left the jurisdiction, he left it up to two minor children to contact their mother, which of course they never did. PETITIONER VICTORIA does not believe that PLAINTIFF GIAMPA could ever meet the 2-part test for a physical custody change which applies when one parent has been previously awarded primary physical custody under Nevada Law. However, when PETITIONER VICTORIA came forward to oppose such change of physical

custody, believing it is not in the best interests of the minor children, she had been unfairly and severely sanctioned by District Court Judge and ordered to pay hefty attorney fees to counsel of record for PLAINTIFF GIAMPA. PETITIONER VICTORIA as a stay-at-home mom was not receiving other income in which to pay such sanctions except those monies already divided and decreed in the parties' Decree of Divorce. PETITIONER VICTORIA believes that she is a victim and actually having suffered prejudice and retaliation from the Court for having come forward to defend her right to due process of law attempting to protect and defend their minor children's statutory and constitutional rights. Other important factors for this Court to consider when determining to recuse and to reassign this case includes PLAINTIFF GIAMPA'S continuous failure to encourage the children to maintain and facilitate a continuing relationship with their mother and evidence of bias because of the lack of admonishment or sanctions by the Court. Meanwhile, PLAINTIFF GIAMPA early on in the divorce proceedings began to rob and loot the community property estate by liquidating certain stock and stealing the entire cash values from whole life insurance policies for himself and his attorney's fee for such ill-advice and ostensible legal representation. The parties agreed to non-modifiable terms and conditions comprising the division and distribution of community property assets pursuant to the Non-Modifiable Property Settlement Agreement. The parties' Agreement has been approved, ratified and merged into the final Divorce Decree such that certain unmistakable terms and conditions of the Agreement called for PLAINTIFF GIAMPA to pay PETITIONER VICTORIA her fair and equal community property share of the equity in the marital home located at 7168 Mira Vista, and also

required PLAINTIFF GIAMPA to purchase or turn over certain real and personal property for PETITIONER VICTORIA. PETITIONER VICTORIA, based upon information and belief, has discovered that the business, Chuck Giampa & Associates, Inc. is actually valued at $500,000.00 rather than the mere $272,000.00 that PETITIONER VICTORIA had been misled and fraudulently induced into accepting as true by PLAINTIFF GIAMPA. PLAINTIFF GIAMPA did stipulate and agree, and was Court Ordered, to pay to PETITIONER VICTORIA $136,000.00, as and for, the purported community value in said business. However, another insurance brokerage business, Network Insurance Services, Inc. which was formed, organized and operating during the marriage was not disclosed by PLAINTIFF GIAMPA, divided or any community equity distributed. No community value has been assessed against the undisclosed business known as Network Insurance Services, Inc. When PETITIONER VICTORIA sought this Court's assistance in locating, dividing and distributing such community assets, the Court imposed hefty financial sanctions against her. Further, the parties did stipulate and agree to a non-modifiable sum of $5,300 per month as and for spousal support for a determined period of 11 years, as well as PLAINTIFF GIAMPA making monthly
payments of $2,400 to PETITIONER VICTORIA pursuant to an Amortization Schedule for a Property Equalization Payment and providing for Equalization Debt payments on an eleven-year amortized payment plan at 9% interest. Prompted by bias and favor, the Court failed and refused to honor and uphold material assertions made during the divorce proceeding when at voir dire on September 24, 1998, PLAINTIFF GIAMPA promised not to seek any future

reduction in agreed upon support payments to PETITIONER VICTORIA. PLAINTIFF GIAMPA breached that stipulation and agreement made an Order of the Court with impunity when he sought, subject to bias and favor, and obtained from the Court an unlawful reduction in his monthly spousal obligation from $5300 per month to $3500 per month by unsubstantiated and false claims of loss of gross annual income. The Court did sanction PETITIONER VICTORIA but recently did withhold admonishment or imposition of sanctions against PLAINTIFF GIAMPA when he failed and refused to cooperate with discovery concerning the safety and welfare of the children and concerning financial issues evidencing bias and prompting this instant motion. PETITIONER VICTORIA filed an appeal before the Nevada Supreme Court but recently at a hearing before the Court had been forced to withdraw her appeal to obtain reasonable discovery in this case. Soon after PETITIONER VICTORIA withdrew her appeal, the Court withdrew her promise of granting discovery and directed PETITIONER VICTORIA to the discovery commissioner who then also proceeded to impose a #3,000.000 sanction against PETITIONER VICTORIA for attempting to obtain reasonable discovery. This case was reassigned a third time to another department. Again, PETITIONER VICTORIA had been threatened with new and additional sanctions. Clearly, the Court record in this case evidences a history of violation of due process that must not continue. PETITIONER VICTORIA having no other remedy at law other than to seek recusal of Judge Sandra L. Pomrenze for cause.

FACTUAL AND LEGAL ARGUMENT

(Points and Authorities)

1. PETITIONER VICTORIA alleges that she, as a party defendant to this domestic case, has been subject to unreasonable and unnecessary bias and prejudice and creating an appearance of impropriety by District Court Judge Sandra L. Pomrenze, (hereinafter RESPONDENT POMRENZE) violating PETITIONER VICTORIA'S right to due process directly and proximately causing substantial injury and harm to her. In this regard, this case No. 98D224029 should be reviewed by Chief District Court Judge Kathy K. Hardcastle (hereinafter RESPONDENT HARDCASTLE) for department reassignment and/or recusal of RESPONDENT POMRENZE for cause pursuant to EDCR 1.60 as follows:

(a) The chief judge shall have the authority to assign or reassign all cases pending in the district.

(d) Judges who disqualify themselves from hearing a case must direct the entry of an appropriate minute order for reassignment on a random basis.

(e) Under the supervision of the chief judge, the court administrator shall assign appropriate matters to available senior judges and visiting judges.

2. PETITIONER VICTORIA further alleges that statutory authority exists to support her claim for RESPONDENT HARDCASTLE to grant her instant motion

for case reassignment and/or recusal for cause should RESPONDENT POMRENZE refuse to disqualify and/or otherwise recuse herself from further involvement in these proceedings because several Judicial Canons appear to have been violated by RESPONDENT POMRENZE including, but not limited to, Canon 2 and Canon 3.

3. PETITIONER VICTORIA further alleges that RESPONDENT HARDCASTLE has the present ability to perform the above-described duty in the absence of a lack of asserted authority by the presiding family court judge. On the other hand, RESPONDENT HARDCASTLE regularly sits on the bench as Chief District Court Judge of the Eighth Judicial Circuit and is able to exercise sound and reasonable discretion in this matter pursuant to Rule 1.30.

4. PETITIONER VICTORIA seeks extraordinary relief for Writ of Mandamus pursuant to N.R.S. 34.150 to 34.310. PETITIONER VICTORIA, in the alternative seeks extraordinary relief by way of a Writ of Prohibition pursuant to N.R.S. 34.320 to 34.350

5. PETITIONER VICTORIA alleges that she has set forth sufficient facts by a preponderance of evidence that demonstrate she has established a prima facie case for the issuance of a Writ of Mandamus. The Court record in this case shows that she moves properly and quickly in these proceedings having filed the appropriate motion and supporting affidavits in her moving papers. She has exhausted her administrative remedies available and now seeks her sole remedy of a Writ of Mandamus. PETITIONER VICTORIA contends that RESPONDENT HARDCASTLE, while exercising her duties as Chief District

Court Judge, did not do what is required under the law. Generally, a Writ of Mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, NRS 34.160; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991), or to control an arbitrary or capricious exercise of discretion. Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

PETITIONER VICTORIA alleges that a Writ of Mandamus must issue here because PETITIONER VICTORIA has no other plain, speedy and adequate remedy in the ordinary course of law. Borger v. Dist. Ct., 120 Nev. 1021, 1025, 192 P.3d 600, 603 (2004). PETITIONER VICTORIA realizes that a Writ of Mandamus is an extraordinary remedy within the discretion of this Court to determine if her Petition will be considered; however, the Nevada Supreme Court has historically noted that a Petition for a Writ of Mandamus is the appropriate vehicle to seek disqualification of a judge. City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16.

6. PETITIONER VICTORIA had moved properly and quickly in prior proceedings. Travelers Ins. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1410 (5th Cir.1994) (holding that party seeking disqualification must do so at the earliest moment after knowledge of facts demonstrating a basis for disqualification); U.S. v. Owens, 902 F.2d 1154, 1155 (4th Cir.1990) (stating that timeliness is an essential element of a recusal motion"). The Canons of Conduct rules require the absence of an appearance of impropriety. State ex rel. McNary v. Jones, 472 S.W.2d 637, 639-640 (Mo. App. 1971)

(no system of justice can function at its best where the litigant sincerely believes the Judge is biased).

On July 19, 2007, the sole hearing held before RESPONDENT POMRENZE in this post divorce case, No. 98-D224029, having recently been reassigned from another department. Child custody, financial and other issues were paramount to this hearing upon the following colloquy between the parties and the Court as follows:

> THE COURT: Court noted ongoing issues regarding the children, however, both children will have emancipated within a month, therefore, those issues will not be addressed. Court noted issues of arrearages and attorney's fees. Argument regarding request for continuance due to conflicting schedule of attorney Duckworth. Defendant recited her statement on the record.

7. Since then, PETITIONER VICTORIA had sought, but has been unable, for one reason or another, to obtain from RESPONDENT POMRENZE a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the August 28, 2007 hearing. PETITIONER VICTORIA had cause for concern as to which motions will be heard and to what extent at the hearing scheduled for August 28, 2007. The Minute Order did not in any way identify or itemize the pending motions. On July 19, 2007 hearing, counsel of record, appears confused and uncertain as to the issues or specific motions pending. PLAINTIFF GIAMPA has yet to answer some of the motions involved in these proceedings. PETITIONER VICTORIA contends that RESPONDENT POMRENZE

should immediately act to resolve any and all such clerical error and/or to clarify the July 19, 2007, Minute Court Order on certain issues but has refused and failed to act when necessary as follows:

> ...
> ATTORNEY DUCKWORTH: Quite frankly, I had lost track of the number of motions that were pending before the court at that time.
> THE COURT: There are 7 or 8.
> ATTORNEY DUCKWORTH: Right. I think there are 8; 7 or 8. I had identified 2 in my motion. I said "including the following two." I didn't say it was limited to those 2. I said including just to give the court some reference that I was aware of 2 of the motions that were pending. (Tr. P6/L16)

8. PETITIONER VICTORIA alleges that the language used by RESPONDENT POMRENZE in the July 19, 2007, Court Minute Order is facially and literally ambiguous and unreasonably subject to interpretation requiring immediate court intervention for correction and/or clarification in order to ensure compliance. In this regard, PETITIONER VICTORIA contends that NRCP 60(a) is generally used to cure all such clerical error and and/or clarification.

9. PETITIONER VICTORIA alleges that one matter before this Court involves a potential for an abuse of process because RESPONDENT POMRENZE refused to disqualify herself. This disqualification would prevent the random transfer of Case No. D224029 to another department. In this regard, PETITIONER VICTORIA alleges that there had been several pending motions before RESPONDENT POMRENZE and the Court who would refuse to hear and

decide. PETITIONER VICTORIA alleges that she has established a prima facie case for the issuance of a Writ of Prohibition because the District Court did act without or in excess of its jurisdiction. State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320. ct Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16.

On August 28, 2007, RESPONDENT POMRENZE did, without proper authority and for other than good cause, vacate certain hearing dates as follows:

> THE COURT: Any pending motions related to custody matters are denied as being moot.
>
> THE COURT: As to any other pending motions related to financial matters, rulings are deferred pending the parties making a genuine attempt to reach a resolution.
>
> THE COURT: Defendant's request for sanctions for Plaintiff's alleged violation of prior orders is denied.

10. PETITIONER VICTORIA contends that there are several unheard and unresolved motions that were listed in the PETITIONER VICTORIA'S Petition for Writ of Mandamus. On July 2, 2007, PETITIONER VICTORIA immediately attempted to resolve many, if not all, of these issues contained in the individual motions such that she filed an Ex-Parte Motion for an Order Shortening Time to hear her NRCP 60(a) Motion for Correction and/or Clarification of the July 19, 2007, Court Minute Order. RESPONDENT POMRENZE without comment or written

decision summarily denied her request to shorten time to hear these important issues prior to the scheduled August 28, 2007, hearing.

11. PETITIONER VICTORIA further alleges that there are several actual and Court Orders for relief requiring immediate attention that apparently were not acknowledged or enforced in any way by this Court that were listed in PETITIONER VICTORIA'S Writ of Mandamus.

12. PETITIONER VICTORIA alleges that she has reasonable cause for overall concern for the correct direction of this case because she has pled a prima facie case establishing fraud upon the court and, therefore, should be allowed her day in court, and to obtain the appropriate court Order(s). Given that the salutary purpose of NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party, PETITIONER VICTORIA should have been granted a hearing. Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987), and in light of the state's sound basic policy of resolving cases on their merits whenever possible. Kahn, 108 Nev. at 510, 835 P.2d at 793. PETITIONER VICTORIA contends that RESPONDENT POMRENZE'S 10-day return time for a conclusive damage amount is unreasonable under these facts and attendant circumstances. Generally, where a claim is fraudulently advanced and that fraud is so successful that the other party is not aware that he has a particular claim or defense, this may be a sufficient basis for equitable relief. Villalon, 70 Nev. at 471, 273 P.2d at 416; Savage v. Salzmann, 88 Nev. 193, 195, 495 P.2d 367, 368 (1972); Colby v. Colby, 78

Nev. 150, 153-154, 369 P.2d 1019, 1021 (1962). PETITIONER VICTORIA contends that, generally, reconsideration is proper if upon motion the court consents to the rehearing. Harvey's Wagonwheel, Inc. v. MacSween, 96 Nev. 106, 178 P.2d 380 (1947). State ex rel Copeland v. Woodbury, 17 Nev. 337, 39 P. 1906 (1883).

13. On August 1, 2007, PLAINTIFF GIAMPA filed his purported response and opposition to PETITIONER VICTORIA'S NRCP 60(b) motion seeking relief to conduct reasonable discovery and an evidentiary hearing. In this regard, RESPONDENT POMRENZE failed and refused to find that PLAINTIFF GIAMPA'S response does not even mention the motion or set forth a viable and sustainable objection to PETITIONER VICTORIA'S claim. In fact, RESPONDENT POMRENZE vacated all of PETITIONER VICTORIA'S pending motions without one single finding of fact or conclusion of law. PETITIONER VICTORIA sought to obtain the deposition of PLAINTIFF GIAMPA, in part, because during the divorce proceeding, at voir dire on September 24, 1998, PLAINTIFF GIAMPA promised not to seek any future reduction in agreed upon support payments to PETITIONER VICTORIA. PLAINTIFF GIAMPA breached a stipulation and agreement, made an order of the Court, when he sought and obtained an unlawful and unjustifiable reduction in his monthly spousal obligation to PETITIONER VICTORIA.

14. PETITIONER VICTORIA alleges that RESPONDENT POMRENZE would act to fail and refuse to protect PETITIONER VICTORIA'S property rights in the total equalization debt amount of $188,734.10 because PLAINTIFF GIAMPA'S figures do not reflect the 9% per

annum interest rate the parties have previously stipulated and agreed to and has been made part of the parties' Decree of Divorce issued on September 24, 1998,

15. PETITIONER VICTORIA alleges that factual evidence exists demonstrating RESPONDENT POMRENZE'S impermissible culpable conduct from the bench that gives rise to her claim of an appearance of impropriety and for other due process law violations. Richard v. Richard, 146 Vt. 286, 501 A.2d 1190, 1191 (1985) (although the ultimate test is whether the judge can decide the case impartially, a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. PETITIONER VICTORIA has further concern for RESPONDENT POMRENZE'S flagrant and carefree disregard of her argument in her motions and in open court concerning the integrity of counsel of record when on July 19, 2007, RESPONDENT POMRENZE, in open Court, states by implication of approval that Attorney Duckworth is categorically okay and a good attorney as follows:

> ...
> THE COURT: Do you want to tell me what a bad guy Mr. Duckworth is?
>
> DEFENDANT VICTORIA: No, no I'm not going to do that. I'm not going to do that.
>
> THE COURT: Then you have 2 minutes....
> (Tr. Pg. 15/L5)

16 In this regard, PETITIONER VICTORIA contends that no matter how well Attorney Duckworth may have performed in other cases that RESPONDENT POMRENZE

is familiar with but for Attorney Duckworth's fraudulent performance in this case, no claim for fraud upon the Court would be before this Court. RESPONDENT POMRENZE'S conduct demonstrating impartiality and appearance of impropriety contravenes the Canons of Judicial Conduct that absolutely require the absence of an appearance of impropriety. State ex rel. McNary v. Jones, 472 S.W.2d 637, 639-640 (Mo. App. 1971) (no system of justice can function at its best where the litigant sincerely believes the judge is biased). For example, PETITIONER VICTORIA has cause for concern because of RESPONDENT POMRENZE and the Court's apparent lack of fairness and disregard in ruling that the parties file a 10-page brief that by implication would not include a memorandum of points and authorities, or even an affidavit, as historically required by EDCR 2.20 and EDCR 2.21. PETITIONER VICTORIA contends that this approach by RESPONDENT POMRENZE unreasonably conflicts with published Court rules and relevant case law. PLAINTIFF GIAMPA'S then purported opposition and response must then be denied. Clearly, by Court direction, PLAINTIFF GIAMPA'S responsive papers would fall substantially below the pleading standard in this jurisdiction. The Court record in this case evidences that PLAINTIFF GIAMPA is represented by able counsel who knows better than to file frivolous and dilatory papers even upon invitation of the Court. Pau v. Yosemite Park and Curry Co., 928 F.2d 880, 885 (9th Cir. 1991) (litigants are, of course, entitled to have their case decided by a judge who can approach the facts in a detached, objective, and impartial fashion). PLAINTIFF GIAMPA'S responsive papers would then be fatally void of any points and authorities, categorically defective and legally insufficient. RESPONDENT POMRENZE'S decision conflicts with

relevant case law because it does not consider that neither attorneys nor parties are authorized to plead defenses that are not well grounded in fact or warranted by law. Buck v. Greyhound Lines, 105 Nev. 756, 783 P.2d 437 (1989).

At the June 19, 2007 hearing, PETITIONER VICTORIA inquired as to how the Court would resolve her NRCP 60(b) motion upon such alternative and suspect procedure specifically designed and put in action by RESPONDENT POMRENZE as follows:

> PETITIONER VICTORIA: Your Honor, what happens to the 60(b) Motion that I have before the Court and the other motions I have striking his papers as being -- what happens to those particular motions?
>
> THE COURT: They're listed in your brief, and you give me in a few short words what you think is done, has happened, and what you think the Court should do, and then I'll agree or disagree, ma'am....
> (Tr. Pg. 17/L18)

17. PETITIONER VICTORIA further contends that when RESPONDENT POMRENZE restricted PLAINTIFF GIAMPA to a one (1) page responsive brief that a controversy exists as to an appearance of impropriety. RESPONDENT POMRENZE'S conduct from the bench would give the impermissible appearance that PLAINTIFF GIAMPA would receive an impermissible expectation and that opposing counsel would be successful in defeating PETITIONER VICTORIA'S NRCP 60(b) motion even upon submitting a simple one (1) page response tantamount to a

scandalous pleading. United States v. Alabama, 828 F.2d 1532, 1540 (11th Cir. 1987) (the right to a fair trial before an impartial judge is a basic requirement of due process and thus guaranteed by the Constitution), cert. denied sub nom. PETITIONER VICTORIA contends that PLAINTIFF GIAMPA'S tainted, spoiled, and scandalous document should be stricken from the Court record for cause pursuant to NRCP 12(f).

18. For a second example, PETITIONER VICTORIA alleges that she has reasonable cause for concern because RESPONDENT POMRENZE ruled that the pre-hearing brief length not exceed ten (10) pages or that any responsive brief filed by PLAINTIFF GIAMPA should not exceed (1) page. PETITIONER VICTORIA is not certain as to whether or not RESPONDENT POMRENZE has sufficient jurisdiction and authority to summarily relax or prospectively waive published Court rules and pleading requirements according to local standards. RESPONDENT POMRENZE appears to have taken sides and/or having abused her discretion when exceeding her authority by relaxing the pleading standards in this instance. These parties have been in litigation for some time and are in mutual need of admissible proof of any claim or defense set forth in this case. EDCR 2.20 requires a memorandum of points and authorities.

19. PETITIONER VICTORIA takes issue with the NEVADA SUPREME COURT'S view of the following since it failed to take into consideration statutory duties and obligations towards the then minor children:

> "Petitioner has not articulated any grounds for disqualification, except that the district judge ruled against her on some issues."

PETITION VICTORIA, in bringing this motion, contends that RESPONDENT POMRENZE'S conduct clearly demonstrates bias when she failed and refused to act reasonably and responsibly towards the parties' then minor children.. NRS 125.480 required that the parties, this court, and RESPONDENT POMRENZE act at all times in the best interests of the then minor children. In the instant case, the parties and this Nevada Supreme Court, retain an interest in the children under the best interest of the children standard until the outcome of the appeal. PETITIONER VICTORIA contends that the statute created measures to respond to the risk of harm of the then minor children and ensured thc protection of the children's interest. Here, the Nevada Supreme Court did not overlook but rather turned a blind's eye to their constitutional duty in protecting the then minor children's welfare and depriving PETITIONER VICTORIA'S a relationship with the parties' children of love and duty in a family unit. PETITIONER VICTORIA brought forth concrete evidence and articulated with points and authorities that indeed PLAINTIF GIAMPA had left the children alone and unsupervised based on the preponderance of evidence standard. Throughout the entire temporary custody procedural proceedings, the district court never took steps to protect those interests, nor took steps to conduct an evidentiary hearing within a reasonable time. Time is of the essence involving the parties' then minor children, and this Court deprived the children by not resolving this temporary situation in a timely manner. In denying PETITIONER VICTORIA'S writ to recuse

RESPONDENT POMRENZE, the Nevada Supreme Court has essentially rewarded the Court's abuse of discretion, rewarded PLAINTIFF GIAMPA for his ongoing willful, disobedient and contumacious conduct, and essentially punishing PETITIONER VICTORIA again.

20. On AUGUST 28, 2007, RESPONDENT POMERANZE found that the Court could do nothing for her in terms of relief for past custody violations. RESPONDENT POMRENZE then switched to the issue of money damages. (See Trp. P8/14-19) However, previously RESPONDENT POMRENZE spoke on community property issues and about custody issues stating that the Court could sanction a party for custody violations post emancipation. (See Tr.Pg. 12/L2-7)

21. On August 28, 2007, PETITIONER VICTORIA attempted to argue for the lost value of community assets previously unrecovered. Specifically, the business known as Chuck Giampa & Associates, Inc. and Network Insurance Services, Inc. There also had been no adjudication for the division and distribution of the business known as Network Insurance Services, Inc. contained in the parties' Decree of Divorce. Upon timely notice to PLAINTIFF GIAMPA that such professional services had been sought and retained to aid in determining a reasonable value of such community property but that no cooperation to extend the 10-day requirement issued by RESPONDENT POMRENZE. Instead, on October 2nd, 2007, PLAINTIFF GIAMPA filed an Order to Show Cause Petition in order to further sanctions against PETITIONER VICTORIA or to otherwise diminish and harass or dispose of altogether PETITIONER

VICTORIA'S recent Court award for damages. (See Tr.Pg. 12/L8-22). (Tr.Pg. 12/L8-22)

22. PETITIONER VICTORIA also sought, but has been unable to obtain for unexplained reasons from RESPONDENT POMRENZE, a Court Order for correction and/or clarification stating that this Court reserves jurisdiction subsequent to the parties' minor son so attaining the age of majority on August 15, 2007, and to find cause to sanction PLAINTIFF GIAMPA for past Court Order violations involving custody and support issues. PETITIONER VICTORIA has expressed her concern about the need to quickly resolve these matters, particularly involving custody matters because PLAINTIFF GIAMPA did continue to take Marco out of the jurisdiction and out of the country, while Marco was still a minor. PLAINTIFF GIAMJPA knowingly and purposefully did so without first having notified PETITIONER VICTORIA, in writing, as required by Court Order.

23. On August 23, 2006, a deposition was scheduled, by PETITIONER VICTORIA, as and for PLAINTIFF GIAMPA to obtain testimony in this case, but that after reasonable and effective notice, he failed and refused to appear for said deposition.

24. PLAINTIFF GIAMPA at some point finally realized that he also had been tricked and duped, by counsel of record, Bryce C. Duckworth, Esq., of the law firm of Smith, Larsen & Wixom, because due to prior Court Order(s) PLAINTIFF GIAMPA could, in no way, not reduce his monthly support obligation to PETITIONER VICTORIA simply by a change of physical custody. PLAINTIFF

GIAMPA instead preferred to pay $1500 to rent an apartment at the Country Club Towers for the parties' two teenage children to live without parental supervision, rather than to pay his Court Ordered monthly support obligation to PETITIONER VICTORIA. PLAINTIFF GIAMPA presently lives with his current wife at another independent residential location separate and apart from the parties' then minor children who would reside without parental supervision at the Country Club Towers. PETITIONER VICTORIA has further cause for concern because RESPONDENT POMRENZE'S Minute Order is deliberately and purposefully silent as to the Court's ability and/or willingness to entertain an imposition of sanctions against PLAINTIFF GIAMPA even though the parties' then minor children would have each attained majority. Potashnick v. Port City Constr. Co., 609 F.2d 1101 (5th Cir. 1980) (a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street), reh'g denied. (See Tr. P. 3/L1)

> THE COURT: I mean, the main issue see to me is what has happened to these kids here, but now it's too late. It's unfortunate, but it is too late. And Marco is going to do what he's going to do and Sarah is going to go do what she's going to do. (Tr. Pg. 13/L21)

> THE COURT: Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these

children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Orders? (Tr. Pg. 16/L24)

25. PETITIONER VICTORIA recently sought but so far is unable to obtain from RESPONDENT POMRENZE a Court Order for correction and/or clarification stating that this Court will uphold and enforce any and all Court Orders for relief that for one reason or another have been put on administrative hold. For example, PETITIONER VICTORIA has been deliberately and purposefully denied her monthly support from PLAINTIFF GIAMPA. PLAINTIFF GIAMPA is presently more than thirty (30) days late on his monthly support payments to PETITIONER VICTORIA. Based upon information and belief, PLAINTIFF GIAMPA has the present ability to pay his monthly support obligations to PETITIONER VICTORIA but for spite, vindictiveness and retaliation, PLAINTIFF GIAMPA fails and refuses to comply and obey such Court Order(s). (See VHS 15:49:30)

26. On February 27, 2007, the Court issued a final and conclusive but unexecuted determination on this issue of a stayed Wage Assignment. PETITIONER VICTORIA also sought to obtain correction and/or clarification of Court Order(s). She contends that because of RESPONDENT POMRENZE'S and the Court's apparent lack of due diligence, clearly PLAINTIFF GIAMPA has expressly

waived any and all potential controversy over the wage assignment issue and offered no objection to an immediate Court Order for a wage assignment against PLAINTIFF GIAMPA.

27. PETITIONER VICTORIA takes exception to RESPONDENT POMRENZE'S and the Court's apparent lack of partiality and the need for urgency towards her several motions made for the purpose of enforcing Court Order(s) for monthly support appears to impermissibly favor PLAINTIFF GIAMPA because she is not and has not been regularly receiving her monthly support payments from PLAINTIFF GIAMPA. PETITIONER VICTORIA sought, but has been unable, to obtain a Court Order for correction and/or clarification of any and all enforceable action to remedy such financial dilemma caused by PLAINTIFF GIAMPA, including but not limited to, scheduling a hearing date to quickly resolve such urgent circumstances.

28. On July 19, 2007, RESPONDENT POMRENZE would act in a very injurious and emotionally upsetting manner towards PETITIONER VICTORIA when she determined as follows:

> THE COURT: There is really not much I can do to issue order(s) to remedy how Marco may have been raised. Okay. It's just too late (expression of washing hands of a done matter). It is -- as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Order(s)? (Tr. Pg. 16/L24)

29. PETITIONER VICTORIA was surprised and shocked by RESPONDENT POMRENZE'S attitude and demeanor towards her. RESPONDENT POMRENZE somehow blames PETITIONER VICTORIA for her exhaustive efforts to demonstrate to this Court the fraud committed by PLAINTIFF GIAMPA, by and through, counsel of record, in this case. The attorney fees she was Court ordered to pay were tenable. PETITIONER VICTORIA as a stay-at-home mom was not receiving other income in which to pay such sanctions except those monies already divided and decreed in the parties' Decree of Divorce.

30. PETITIONER VICTORIA recalls when she had been severely sanctioned having been deemed to have filed frivolous and otherwise legally insufficient papers before the Court. PLAINTIFF GIAMPA, and his counsel of record, then sought and obtained such hefty and severe sanctions against PETITIONER VICTORIA totaling $14,350.00 for coming forth to file motions to protect PETITIONER VICTORIA'S constitutional right to parent and protect the parties' children.

31. PETITIONER VICTORIA sought, but for some unexplained reason, was unable to obtain from RESPONDENT POMRENZE and the Court a Court Order for correction and/or clarification of the deadline date established by the Court for the parties to file and exchange a copy of their respective AFCs (Affidavits of Financial Condition). The July 19, 2007, Court Minute Order confirms such Order. (Tr.Pg. 18/L5)

32. On July 24, 2007, PETITIONER VICTORIA diligently complied with the bench ruling and filed her AFC.

PLAINTIFF GIAMPA did not file his AFC until August 8, 2007, 16 days late. PETITIONER VICTORIA contends that RESPONDENT POMRENZE abused her discretion when ruling that the parties do not have to submit federal tax returns. The issue of PLAINTIFF GIAMPA submitting a copy of his federal tax returns has been an unexplained and unresolved material issue in this case for a long time. PETITIONER VICTORIA has ample reason to dispute PLAINTIFF GIAMPA'S AFC due to a history of fraudulent or incomplete AFC's.
(Tr. Pg. 22/ L1-13)

33. PETITIONER VICTORIA alleges that she has reasonable cause for concern for RESPONDENT POMRENZE'S apparent impropriety demonstrates a flagrant and carefree disregard of her several motions scheduled to be heard on July 24, 2007. In the past PETITIONER VICTORIA has had difficulty in receiving copies of PLAINTIFF GIAMPA'S federal tax returns when financial issues were involved. PLAINTIFF GIAMPA even admits to such delinquent status pertaining to his monthly support obligation.
(Tr. Pg. 21; L13)

34. PETITIONER VICTORIA, by way of appropriate motion, sought but was unable to obtain from RESPONDENT POMRENZE and the Court a correction and/or clarification of Court Order(s) and a formal written Minute Order signed by the Court pertaining to the July 19, 2007, hearing. State v. Bell, 34 Wash. 185, 75 P. 641; Hanley v. Most, 9 Wash.2d 429, 115 P.2d 951, 118 P.2d 946; 34 C.J. 506, 64; 21 C.J.S., Courts, § 226, p. 421. PETITIONER VICTORIA is concerned and seeks

clarification because on July 19, 2007, the Court ruled as follows:

> THE COURT: No Order is required from today, the Minutes will stand as the Order.

35. In this regard, RESPONDENT POMRENZE'S and the NEVADA SUPREME COURT'S ruling appears slanted and shows bias and/or prejudiced when she contends that an Oral Bench Order is sufficient, relying on language in this court's recent opinion in State, Division of Child & Family Services v. District Court, 120 Nev. 445, 92 P.3d 1239 (2004). In that case, the Nevada Supreme Court considered when a district court's Oral Order must be written, signed and filed before becoming effective. The phrase "enter an order" could mean entry of a written order, or it could mean entry of the court clerk's minutes of the district court's oral decision. Thus, the phrase is ambiguous. Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003); State, Dep't Mtr. Vehicles v. Vezeris, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986).

36. PETITIONER VICTORIA takes further exception to such Court Minute Order and sought but has been unable to obtain from RESPONDENT POMRENZE and the Court a Court Order for correction and/or clarification of the July 19, 2007, Minute Order because it indicates that counsel of record, Bryce C. Duckworth, Esq. is from the law firm Dickerson & Dickerson, Consul & Pocker, rather than the law firm of Smith, Larsen & Wixom. This had been an issue in prior proceedings that Attorney Duckworth should have

put to rest. In those proceedings, Attorney Duckworth did not state why another attorney from his law office could not make an appearance to obtain a continuation of a hearing date. Instead, Attorney Duckworth defends upon an overall claim of oversight. The facts establish that on numerous occasions Attorney Duckworth has deliberately and purposefully inserted his former law firm's name in moving papers, then refuses to correct the Court record, in an underhanded attempt to gain favoritism from this Court, creating and furthering an impermissible appearance of impropriety that RESPONDENT POMRENZE has yet to denounce. Holt v. KMI Continental, Inc., 821 F. Supp. 846, 848 (D. Conn. 1993) ("perceptions to a pro se plaintiff are often as significant, or even more so, than the reality"). PETITIONER VICTORIA alleges that she has met the standard for assessing judicial bias in this jurisdiction, that "whether a reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's impartiality. PETA v. Bobby Berosini, Ltd., 111 Nev. 431, 438, 894 P.2d 337, 341 (1995). Richard E. Flamm, Judicial Disqualification 5.5 (1996). At hearing Attorney Duckworth attempts to defend as follows:

37. PETITIONER VICTORIA has further cause for concern of the substance and procedural significance of the July 19, 2007, Court Minute Order. Generally, the Nevada Rules of Appellate Procedure deem a Minute Order a nonappealable Order. PETITIONER VICTORIA sought to exhaust her administrative remedies to obtain from RESPONDENT POMRENZE a Court Order for correction and/or clarification of the outstanding issues regularly contained in a formal written and signed Court Order. PETITIONER VICTORIA, in proper person, contends that

due process was never thought to require that she be law tainted or an administrative law clerk. However, PETITIONER VICTORIA contends that once RESPONDENT POMRENZE failed to file an appealable Order, the burden shifted to the Nevada Supreme Court to control the District Court's arbitrary or capricious abuse of discretion and immediately Order RESPONDENT POMRENZE to submit findings of facts and conclusions of law written in an appealable Order. Although PETITIONER VICTORIA provided points and authorities and has articulated a clear and convincing argument, the Nevada Supreme Court has imposed unnecessary procedural obstacles for PETITIONER VICTORIA designed only to further undermine the best interest of the children standard, further the fraudulent interests of PLAINTIFF GIAMPA and his counsel of record, and burden PETITIONER VICTORIA with court costs. PETITIONER VICTORIA contends that she has done nothing wrong, having committed no procedural error. There is no existing genuine basis in fact for this Court to find to determine to punish PETITIONER VICTORIA any further in these proceedings. Stedtheld v. State, 114 Idaho 273, 755 P.2d 1311, 1314 (1988) (to show a violation of due process, the petitioner must demonstrate the judge's vindictiveness or intent to punish him for exercising his rights).

38. PETITIONER VICTORIA further contends that denying PETITIONER VICTORIA'S motion will only reward PLAINTIFF GIAMPA'S request for attorney fees and/or sanctions should be denied. This Court cannot act as an employment office for unemployed or under-employed attorneys. Generally, an award of attorney's fees lies within the District Court's discretion, but a court may not

award attorney fees absent authority under a specific rule or statute. Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 993, 860 P.2d 720, 722 (1993). PETITIONER VICTORIA further contends that PLAINTIFF GIAMPA'S response and opposition is legally insufficient and unable to sustain a viable objection in these proceedings. PLAINTIFF GIAMPA'S responsive papers are categorically frivolous and meritless all done to aid, facilitate and to perpetuate fraud upon the Court. NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party," Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987). NRS 18.010(2)(b) provides, in pertinent part, that a District Court may award attorney fees to a prevailing party when the court finds that a claim was brought without reasonable ground or to harass the prevailing party. Duff v. Foster, 110 Nev. 1306, 1308-09, 885P.2d 589, 591-92 (1994) (concluding that the proper inquiry under NRS 18.010(2)(b) is whether the claim was brought without reasonable grounds), overruled on other grounds by Halbrook v. Halbrook, 114 Nev. 1455, 971 P.2d 1262 (1998). Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 382, 385 (1990) (determining that, where the law was not free from doubt and a complaint presented complex legal questions concerning statutory interpretation and legislative intent, the District Court abused its discretion in awarding attorney fees on the basis of NRS 18.010 (2)(b)); Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 995, 860 P.2d 720, 724 91993) (noting that an award made in clear disregard of guiding legal principles may constitute an abuse of discretion). PETITIONER VICTORIA has cause for concern because RESPONDENT POMRENZE displayed bias and personal animus towards her on several occasions having essentially

and constructively threatened her from the bench affecting due process of law as follows:

> ...
> THE COURT: Don't paper me, ma'am. Just understand something. Don't paper me with a bunch of motions and a bunch of replies. And I will admonish you again, and I know you've received this admonishment before, but guess what? I take it seriously.... (Tr. Pg. 20; L12)

39. On August 28, 2007, PETITIONER VICTORIA was made by RESPONDENT POMRENZE to feel belittled and humiliated when refusing to allow her to query the Court as follows and further refuse to address the lack of supervision under the best interest of the children standard. (Tr.Pg. 21/L17-24)

40. On AUGUST 28, 2007, RESPONDENT POMRENZE would act to violate PETITIO7NER'S right to due process when disallowing a Court return date or any other remaining avenue by vacating her numerous motions where PETITIONER VICTORIA could obtain relief from the Court. (Tr.P.25/L14-19)

41. PETITIONER VICTORIA contends that she has met the substantive standard for recusal is "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." United States v. Hernandez, 109 F.3d 1450, 1453 (9th Cir.1997). Accordingly, this case should be administratively transferred to another department or that RESPONDENT POMRENZE should be disqualified from

further participation in the proceedings involving this case and subject to a Court Order for recusal for cause.

42. PETITIONER VICTORIA contends that the Nevada Supreme Court overlooked and denied PETITIONER VICTORIA'S constitutional right to a determination of other existing equitable considerations which would allow PLAINTIFF GIAMPA and his counsel of record, to evade review of the following issues:

1. contempt for his continuous and contumacious violations of previous Court Orders in leaving the minor children home alone and unsupervised in a third and separate residence, at the Country Club Towers, affecting their safety and welfare;

2. contempt for violating previous Court Orders in depriving the then minor children an education at a Christian school;

3. contempt for his continuous and repeated violations of previous Court Orders to make best efforts at paying arrears;

4. contempt for his willful and deliberate culpable acts constituting fraud upon the Court pursuant to NRCP 60(b);

5. a Court Order finding that PETITIONER is entitled to relief of judgment pursuant to NRCP 60(b);

6. a Court Order enforcing PLAINTIFF GIAMPA'S monthly obligation to pay to PETITIONER VICTORIA equalization debt/spousal support arrears in the amount

of $1,220 per month pursuant to a Court Order dated May 9, 2003;

7. a Court Order reinstating PLAINTIFF GIAMPA'S original monthly obligation for spousal support to PETITIONER VICTORIA from $3,500 to $5,200;

8. a judgment and Court Order enforcing the Confession of Judgment stating a $10,000 sanction for each and every occasion PLAINTIFF GIAMPA was more than thirty (30) days late in paying support pursuant to the Confession of Judgment dated May 9, 2003;

9. a Court Order for the imposition of commensurate sanctions against PLAINTIFF GIAMPA immediately due and payable to PETITIONER VICTORIA for all such contempt;

10. a Court Order reducing to judgment against PLAINTIFF GIAMPA and any and all support arrearages and monetary sanctions to PETITIONER VICTORIA;

11. Court Order denying PLAINTIFF GIAMPA'S claim for such attorney fees from PETITIONER VICTORIA and is subject to the general rule which is that an attorney's neglect will be imputed to his client and he is held responsible for it. There is absolutely no basis in fact or law that this Court could find to determine to punish PETITIONER VICTORIA in any further proceedings;

12. providing PETITIONER VICTORIA compensation for a returned check for insufficient funds in payment for support payments;

13. contempt for deliberately delaying mail from PLAINTIFF GIAMPA'S counsel of record to PETITIONER VICTORIA;

14. contempt for deliberately untimely filing PLAINTIFF GIAMPA'S motion in limine.

43. PETITIONER VICTORIA alleges that RESPONDENT POMRENZE would act again to fail and refuse to protect PETITIONER VICTORIA'S property rights when she made an Oral Order vacating PETITIONER VICTORIA'S Countermotion for Contempt scheduled for November 13, 2007. PETITIONER VICTORIA argues that although she filed an appeal, this Court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed Order, matters that in no way affect the appeal's merit. Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). This Court does have jurisdiction to consider the portion of PETITIONER VICTORIA'S motion concerning contempt because the district court has the power to enforce custody provisions pending appeal, that issue is collateral to the issues before this court on appeal from the divorce decree. Most v. Most, 477 A.2d 250, 263 (Me.1984) recognizing that a lower court may enforce custody provisions pending appeal. Wolfe v. Wolfe, 67 N.C.App. 753, 314 S.E.2d 132, 133 (1984) providing that a trial court has contempt power while an appeal is pending. PETITIONER VICTORIA'S filing of the appeal in no way stays her interest in challenging PLAINTIFF GIAMPA'S contempt motion and for this Court to impose sanctions on PLAINTIFF GIAMPA

and his counsel of record. This controversy demands reconsideration by this Court.

44. PETITIONER VICTORIA has cause for concern because the Court's record is deliberately and purposefully silent as to this Court's written Court Order vacating PETITIONER VICTORIA'S Countermotion for Sanctions scheduled for November 13, 2007. PETITIONER VICTORIA has further cause for concern of the substance and procedural significance of the Court's Oral Order vacating PETITIONER VICTORIA'S Countermotion for Sanctions scheduled for November 13, 2007. Generally, the Nevada Supreme Court deems an Oral Order a nonappealable Order.

CONCLUSION

Based upon the above and foregoing factual and legal argument, PETITIONER VICTORIA has again demonstrated that she is entitled to have this Court grant her writ and commensurate relief prayed for. That in granting her motion, it would also permit due process to be granted to PETITIONER VICTORIA, with an adjudication of contumacious contempt on the part of PLAINTIFF GIAMPA and his counsel of record and denying any award of undeserving attorney fees and sanctions.